

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI  
(Court No.2)**

**O.A NO. 228 OF 2010**

**IN THE MATTER OF:**

**HAV PARMANAND SAHOO .....APPLICANT**  
Through : Mr. Rohit Pratap, counsel for the applicant

**Vs.**

**UNION OF INDIA AND OTHERS .....RESPONDENTS**  
Through: Mr. Anil Gautam, counsel for the respondents

**CORAM:**

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER  
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 21.05.2012**

1. The OA No.228/2010 was filed in the Armed Forces Tribunal on 09.04.2010.
2. Vide this OA the applicant has prayed for setting aside of the retirement order dated 29.09.2008 w.e.f. 01.10.2009 (Annexure A-1), has also sought reinstatement in service and to be promoted to the rank of Naib Subedar with effect from 08.03.2009 with all consequential benefits.
3. Brief facts of the case are that the applicant joined the Indian Army in EME Corps on 01.10.1983. In due course, he became a Havildar.

4. The applicant was posted from 633 EME Battalion (293 Armed Workshop) to 17 Horse on 02.09.2007. Having completed his tenure in the 17 Horse, the applicant was posted to HQ 6(I) Armd Brigade (LRW) on 17.05.2008 (Annexure A-2). The movement was duly informed to the Record Office vide Part-II order.

5. On 06.10.2008, the EME Records issued a letter detailing the applicant for promotion cadre course from Havildar to Nb Subedar. Unfortunately, the intimation of the cadre promotion course never reached the applicant's unit as it was sent to the previous unit of the applicant. Hence the applicant was unable to attend the said course.

6. It has been contended that in the meantime the applicant was issued with the retirement order in the rank of Havildar w.e.f. 01.10.209 (Annexure A-1) and he was also informed on 19.03.2009 (Annexure A-7) by the respondents that he has been superseded since he was not qualified on the promotion cadre course.

7. It is further submitted that the unit of the applicant immediately took up the case of the applicant with the OIC, EME Records vide letter dated 09.07.2009 (Annexure A-8) and intimated that the unit of the applicant have never been informed about the detailment of the applicant for the promotion cadre course. A similar letter was also initiated by the unit on 11.07.2009 (Annexure A-9) to higher headquarters.

8. Looking at the urgency of the case, the DDG EME also wrote a letter dated 13.07.2009 (Annexure A-10) addressed to the EME Records stating that the applicant was not at fault and he should not be penalised for organisational lapses.

9. The EME Records replied on 14.07.2009 (Annexure A-11) to the Unit admitting the fault of the previous unit of the applicant but declined to give any relief to the applicant stating policy constraints. The unit once again took up the case on 15.07.2009 with the EME Records asking them not to supersede the applicant and also not to send him on retirement from service as he was not at fault.

10. The applicant moved a representation in the form of non-statutory complaint dated 05.08.2009 (Annexure A-13) and again on 07.09.2009 (Annexure A-14) seeking redressal for promotion to the rank of Nb Subedar which has not been disposed off at the time of filing of the present OA. The applicant finally retired on 30.09.2009.

11. Learned counsel for the applicant argued that this was a clear cut case of mismanagement by the Record Office. The Record Office was always aware of the location of the individual as the Part-II Order of his movement from 17 Horse to HQ 6(I) Armd Brigade (LRW) was published on 21.07.2008 immediately after his arrival to the new unit on 17.05.2008. Therefore, to say that the Record Office was not aware of the location of the applicant and thus the detailment letter for

promotion cadre which was issued on 06.10.2008 was sent to the previous unit is incorrect. He argued that there was a clear lapse on the part of the organisation and therefore, there is a requirement to redress the injustice done to the applicant.

12. The case taken up by the Unit as well as by the HQs speaks for themselves and therefore, there is a requirement to compensate the applicant by providing him an extra opportunity as also to consider the applicant for promotion afresh.

13. Learned counsel for the respondents argued that there has been no dispute with regard to the facts of the case. However, he contended that the applicant was screened for detailment to the rank of Havildar to Nb Subedar promotion cadre course during October 2008. Accordingly, the applicant was detailed to undergo CCHNS Course Serial No.05/2008-09 conducted at 3 EME Centre, Bhopal from 08.12.2008 to 07.03.2009. This detailment letter was forwarded to 633 EME Bn as he was posted to the said unit w.e.f. 06.02.2007. Since the applicant was on deputation in UN Mission with 17 Horse, 633 EME Bn vide letter dated 31.10.2008 had dispatched the detailment letter to 17 Horse (UN Mission).

14. It has further been stated that since the applicant could not attend the said course, he was declared absent on the course and the intimation was received by the EME Centre, Bhopal on 30.12.2008.

Thereafter, the applicant could not be detailed again for the subsequent promotion cadre course as per Govt. of India letter dated 04.05.1999 wherein there is a restriction on the age for promotion to the rank of Nb Subedar which is normally below 44 years of age or those who have not completed more than 26 years of service. In the instant case, the applicant's date of birth was 22.03.1965 and he had crossed the upper age limit of 44 years for promotion to the rank of Nb Subedar on 22.03.2009.

15. Learned counsel for the respondents further submitted that while going on the UN Mission, the applicant has submitted "Adverse Career Certificate" (Annexure R-1). On his de-induction from UN Mission, the applicant did not ever represented for his detailment on promotion cadre course and about his promotion prospects. He did not even make a representation even after the issuance of discharge order. Therefore, the applicant was discharged on 30.09.2009 on completion of his 26 years of service as per terms and conditions applicable to his rank.

16. Learned counsel for the respondents further submitted that EME Records is a big organisation which deals with complete documentation pertaining to postings, promotions, detailment course etc., of all JCOs/NCOs. The process of automation is going on. However, for certain reasons, at times the data is not fully updated and

thus the information though received vide Part-II orders, cannot be acted upon. In the instant case, the detailment letter issued in respect of the applicant was correctly dispatched to 633 EME Bn based on the available data with the Record Office, which might not have been updated at that time for the reasons mentioned earlier.

17. He further argued that that the applicant could not attend the promotion cadre course for which he was so detailed and for which an absent report was received. Based on that report, reasons for the applicant's absence on the course was sought from 17 Horse vide EME letter dated 10.01.2009. However, after a lapse of more than 7 months, 17 Horse replied vide their letter dated 23.08.2009 intimated that the letter from 633 EME Bn was not received by them. In the meantime, since the applicant did not represent for his detailment, that was mandatory for consideration for higher rank, and he was lacking, therefore, discharge order was issued.

18. Having heard both the parties at length and having examined the documents placed before us, we are of this opinion that lack of automation does not absolve the Record Office from not correctly dispatching the detailment letter for promotion cadre to the applicant. The Part-II order for the applicant's joining HQ 6(I) Armd Brigade (LRW) was published on 21.07.2008. On the other hand, the detailment letter for the applicant to attend the promotion cadre course

on EME Centre, Bhopal was issued on 06.10.2008. Thus, looking at the dates and the time available in between, the Record Office cannot absolve itself from not having despatched the detailment of promotion cadre letter to the correct unit. The other excuses submitted by the respondent side in this respect are also baseless. It was obligatory duty of the respondents to intimate the applicant for cadre course, and they remained utterly failed in discharging their duty, for that the applicant cannot be blamed and he be made sufferer.

19. We also note that the respondents have stated that the applicant have given an "Adverse Career Certificate" dated 30.08.2007 (Annexure R-1). This certificate does not come in the way, as when the course was to commence, the applicant had been repatriated to India and had reported to HQ 6(I) Armd Brigade (LRW) on 17.05.2008.

20. We have examined the correspondence that has taken place between the unit of the applicant and the Record Office. We have also perused the correspondence that has taken place with the HQs with specific reference to the DO letter written by DDG EME to the Record Office and all other concerned. It clearly brings out that the organisation was at fault in intimating the applicant for detailment for clearing cadre test resulted in deprivation of promotion and financial loss thereon and for extension of period of service. Under such circumstances, the mistake could have been rectified by seeking a

special waiver for the applicant but it was not done. The applicant has now retired on 30.09.2009. He has also not qualified to become a Nb Subedar as of date since he has not passed the promotion cadre course to Nb Subedar. Thus, he cannot be promoted even notionally to the rank of Nb Subedar as he is lacking of mandatory promotion criteria.

21. We consider that it is a fit case for awarding compensation since the applicant cannot be reinstated to clear that course and without that he cannot be promoted even notionally at this point of time. Our view is also supported by the judgment given by this Tribunal in OA No.639/2010 Vinod Kumar (Retired) Vs Union of India decided on 10.05.2012. Our view is further strengthened from the judgment **(2005) 12 SCC 258 Govt. of A.P. and Another Vs M. Adbuta Rao** of Hon'ble Apex Court. In these cases, the petitioners were compensated against the wrongs committed by the respondents.

22. We are of the opinion that an amount of Rs.50,000/- as compensation to the applicant will meet the ends of justice. The amount will be paid within 90 days of this order, failing which interest @12% will be chargeable on the amount to be paid from the date of this order.

23. The OA is allowed for the aspect of compensation only. Rest prayers are disallowed. No orders as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**

**(MANAK MOHTA)**  
**(Judicial Member)**

**Announced in the open Court  
on this 21<sup>st</sup> day of May, 2012.**